

**COMPLAINT INVESTIGATION
ELKO COUNTY SCHOOL DISTRICT
(#EL101315)**

Report Issued on December 1, 2015

INTRODUCTION

On October 13, 2015, the Nevada Superintendent of Public Instruction received a Complaint from Parents alleging violations in the special education program of a student with a disability attending school in the Elko County School District (ECSD). The Parents alleged violations of the Individuals with Disabilities Education Act (IDEA) and the Nevada Administrative Code (NAC), Chapter 388, stating that the student's individualized education program (IEP) was not implemented in that: a) the student did not receive the specially designed instruction of language arts instruction from the inclusion teacher in the regular education classroom from April 13, 2015 through April 15, 2015; b) the student had none of the specially designed instruction of 150 minutes a week of language arts instruction in the resource room from August 31, 2015 through October 2, 2015; and c) the token economy was only used 9 times from August 31, 2015 to October 2, 2015. The Parents' proposed resolution was for the ECSD to pay for one year's access to the Headsprout® online reading comprehension program and for ECSD employees to receive training in the use of token economies for students.

All documents submitted by the Parents and the ECSD relevant to the issues in the Complaint were reviewed in their entirety in this investigation. The Complaint Investigation Team also collected and reviewed additional information as needed during the investigation. The Findings of Fact cite the source of the information determined necessary to resolve the issues in this Complaint.

COMPLAINT ISSUES

The allegations in the Complaint, further clarified during the investigation, raised the following issue under the jurisdiction of the NDE to investigate:

Issue One: Whether the ECSD complied with the IDEA and the NAC, Chapter 388, with regard to implementing the student's IEP, specifically with respect to providing the specially designed instruction of language arts in both the regular education classroom from April 13, 2015 to April 15, 2015 and in the resource room from August 31, 2015 to October 2, 2015 and a token economy system from August 31, 2015 and October 2, 2015.

FINDINGS OF FACT (FOF)

General

1. The student had a February 26, 2015 IEP in effect during the time period of the allegations in this Complaint that included, among other goals, a language arts goal. (February 26, 2015 IEP, review of documents)

2. There were 3 school days from April 13, 2015 through April 15, 2015 and the student was present at school on April 13th and April 15th and absent on the 14th. (Academic Calendar, Attendance Records, April 14, 2015 Parent email)
3. There were 27 school days (five weeks) in the 2015/2016 school year from August 31, 2015 through October 2, 2015. (Academic Calendar)
4. The student was present for all school days from August 31, 2015 through October 2, 2015. (Attendance Records)
5. On October 2, 2015 the Parents removed the student from the ECSD. Subsequent to the removal, the student commenced homeschooling with the Parents, who used, among other materials, an online reading comprehension program from Headsprout[®]. (Complaint, Parent interview)
6. The February 26, 2015 IEP required that the student receive the following specially designed instruction:
 - a. Language arts instruction in the regular classroom for 150 minutes a week.
 - b. Language arts instruction in the resource room for 150 minutes a week.(February 26, 2015 IEP)
7. The 150 minutes a week of language arts instruction in the regular classroom and in the resource room were to be provided in segments of 30 minutes a day. (Case Manager)
8. The ECSD conceded that that the student did not receive either the specially designed instruction of language arts in the regular education classroom on April 13, 2015 and April 15, 2015 or the specially designed instruction of language arts in the resource room any day from August 31, 2015 through October 2, 2015. Further, the ECSD did not provide any documentation demonstrating that the student made any progress in language arts from August 31, 2015 through October 2, 2015. In recognition of the failure to provide these services, the ECSD stated that it was willing to provide the Parents' proposed resolution of a one year subscription to Headsprout[®], an online reading program with which the district is familiar and utilizes when appropriate for students. The ECSD can issue a purchase order for Headsprout[®] in 5 to 15 days. (ECSD memos, Special Services Director)
9. The Headsprout[®] reading program consists of multiple learning modules, including one on one comprehension that addresses the skills targeted in the student's language arts goal. The Headsprout[®] reading program is available through an annual subscription. The subscription provides access to all learning modules in reading. A year's subscription to the Headsprout[®] Reading Program costs \$189.00. The student had access to the Headsprout[®] reading program in previous years when learning at home and had used it successfully. (Headsprout[®] website, Parent interview)
10. The February 26, 2015 IEP included an accommodation stating that the student would use a token economy in the resource room and in the regular education classroom. The frequency of the provision of the token economy was stated as "in all academics" and in this instance, "in all academics" referred to in all academic teaching daily. The IEP contained no other

specification for the teachers to follow regarding the use of the token economy in the IEP, i.e. what behaviors it would be used for, how often it would be used, and for what duration, how the behaviors would be tracked (i.e. stickers, tokens, checkmarks), or what reinforcements would be used. The ECSD clarified that the token economy was to be used to address the student's ability to complete tasks. (February 26, 2015 IEP, Case Manager)

11. A token economy system consists of a method of strengthening a behavior or increasing its frequency with the tokens serving as a way of "paying" children for the completion of tasks and the tokens can be used to "buy" desired activities or items, thereby reinforcing certain behaviors with the use of reinforcements. A token board is a method of tracking the behaviors to be strengthened or reinforced. (Special Services Director, *National Professional Development Center's Guide to Token Economy*-submitted by Parents)
12. The student's regular education teacher and inclusion teacher for the 2015/2016 school year utilized a token economy with the student during part of the day, but not during all academic instruction every day. As the student's ability to complete tasks independently improved during the five weeks of attendance, the teachers did not feel it was necessary. (Regular education teacher, Inclusion teacher)

CONCLUSIONS OF LAW AND REASONING

Issue One: Whether the ECSD complied with the IDEA and the NAC, Chapter 388, with regard to implementing the student's IEP, specifically with respect to providing the specially designed instruction of language arts in both the regular education classroom from April 13, 2015 to April 15, 2015 and in the resource room from August 31, 2015 to October 2, 2015 and a token economy system from August 31, 2015 and October 2, 2015.

Pursuant to NAC §388.281(6)(g), the ECSD was required to provide the services and instruction deemed necessary for the student by the IEP Team. (See also 34 C.F.R. §300.323(c)(2)).

In this case, the student's February 26, 2015 IEP stated that the student would receive the specially designed instruction of language arts for 150 minutes a week (30 minutes a day) both in the regular education classroom and in the resource room. (FOFs #6, #7) The ECSD conceded that it did not provide either the specially designed instruction of language arts in the regular education classroom on April 13, 2015 and April 15, 2015 or the specially designed instruction of language arts in the resource room every day from August 31, 2015 through October 2, 2015 as required by the IEP. (FOF #8) In the absence of documentation that the student had made progress towards the language arts goal from August 31, 2015 through October 2, 2015, a student specific remedy is required for the failure of the ECSD to provide the required specially designed instruction in language arts as required by the February 26, 2015 IEP.

The student's February 26, 2015 IEP also included an accommodation stating that the student would use a token economy in all academics in the resource room and in the regular education classroom. (FOF #10) While the ECSD did provide a token economy to the student, it did not provide it during all academic instruction at the required frequency in the student's IEP. (FOF

#12) The Complaint Investigation Team noted that while the token economy was not provided daily in all classes, the student's ability to complete tasks improved (FOF 12) and, therefore, no student specific remedy will be ordered with respect to the failure to provide the token economy daily.

Therefore, the ECSD failed to comply with the IDEA and the NAC, Chapter 388, when it did not implement the student's IEP with respect to the requirement to provide the specially designed instruction of language arts in both the regular education classroom and the resource room and with respect to providing the token economy daily in all academic classes.

ORDER FOR CORRECTIVE ACTION

The ECSD is required to take corrective actions to address the violations found in this Complaint investigation, specifically it did not implement the student's February 26, 2015 IEP with respect to the provision of the specially designed instruction in language arts in the regular education classroom or in the resource room as required by the IEP and with respect to the provision of a token economy daily in all academic classes.

Directed Action

Upon consideration of the ECSD's agreement to provide a one year's subscription to the Headsprout® on-line reading program prior to the issuance of the Complaint Report and the student's previous success in working with the Headsprout® reading program (FOFs #8, #9), the ECSD is ordered to purchase for the use of the student, one year's access to the Headsprout® on-line reading program, within 15 days of receipt of this Report unless the Parents and the ECSD agree otherwise.

Professional Development/Training

Within 45 days of the receipt of this Report, the ECSD must develop and submit to the NDE a proposed Corrective Action Plan (CAP) to train all personnel, including administrators and teachers, at the student's school who are responsible for the provision of specially designed instruction and accommodations to students with IEPs. The plan must include the content of the training and a method for demonstrating mastery of the content by the participants.

The CAP must be approved by the NDE prior to implementation. Following approval of the CAP by the NDE, it must be implemented within 30 days and a report must be submitted to the NDE to document its implementation.